

INFORMATION LETTER

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NATIONAL CANNERS ASSOCIATION

For Members
Only

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PROCUREMENT: Walsh-Healey Exemption Granted

Secretary of Labor Martin P. Durkin on May 26 granted a limited exception from provisions of the Walsh-Healey Public Contracts Act for contracts for certain canned fruits and vegetables. This action was taken in response to a request from the Department of Defense for a relaxation from the provisions of the Act to facilitate procurement, and follows a public hearing held on March 25, 1953. Subsequent to the hearing the Veterans Administration also submitted a similar request. The exception applies to contracts awarded by these agencies between May 26 and December 31, 1953, inclusive.

Secretary Durkin said: "The record of the hearing amply demonstrates that it is in the best interest of both the government and the industry that provision be made whereby the industry will be enabled to operate under a single set of labor standards during the 1953 period of seasonal activity. The record shows also that serious difficulties would arise during the 1953 season with respect to procurement of certain canned fruits and vegetables in the quantities required unless an exception were granted."

Secretary Durkin pointed out that the exception waives, among other provisions, the Walsh-Healey Act's overtime pay requirements and its provisions that prohibit the employment of girls aged 16 and 17. The exception applies, however, only during those weeks in which canning operations are exempt under sections 7(b)(3) or 7(c) of the Fair Labor Standards Act. Section 7(c) of the wage and hour law provides a complete overtime pay exemption during a period of 14 weeks. Under section 7(b)(3), overtime need be paid -- during an additional 14 weeks -- only for hours worked in excess of 12 a day or 56 a week. If government work is done in a week not selected for one of these exceptions, the Public Contracts Act's provisions will apply and employers must pay overtime after 8 hours a day or 40 a week and may not employ girls under 18 years of age.

Secretary Durkin pointed out that employers may continue to choose the weeks in which they avail themselves of the sections 7(c) and 7(b)(3) exemptions under the wage and hour law, as they have in the past. The workweeks selected need not be consecutive.

Certain employers are located within "the area of production" and thus have available a year-round exemption from both minimum wage and overtime provisions under the wage and hour law. These employers may also qualify under sections 7(b)(3) and 7(c) of the wage and hour law and thus have 28 weeks of canning operations on Army or Veterans Administration contracts which will be excepted from all requirements under the Walsh-Healey Act except the prohibition of employment of children under 16 years of age. During 14 of such weeks, these employers have an unlimited overtime exemption. With respect to the remaining 14 weeks of the Walsh-Healey Act exception period, the employer must pay time and one-half for overtime after 12 hours a day or 56 a week during those weeks in which government work is done.

The Secretary's action in no way affects the minimum wage exemption which is presently available to employers in the "area of production" under the Fair Labor Standards Act.

The testimony at the hearing showed that while procurement difficulties arose primarily with respect to the requirement for the payment of overtime, some problems also involved the employment of girls between the ages of 16 and 18. The special exception permits the employment of 16- and 17-year-old girls on contracts subject to the Walsh-Healey Act only during those weeks in which the other Public Contracts Act requirements are waived. The special relaxation may not be invoked in the case of children less than 16 years of age and liquidated damages in the amount of \$10 a day will continue to be due for each such child knowingly employed on government work.

Following is the text of the Labor Department order granting the exemption:

On March 11, 1953, notice was published in the Federal Register (18 F. R. 1404) that the Secretary of the Army had made a written finding that the conduct of government business will be seriously impaired by the inclusion of the representations and stipulations of section 1 of the Walsh-Healey Public Contracts Act (49 Stat. 2036; 41 U.S.C. 35-45) (hereinafter called the "Act") in contracts awarded on or before December 31, 1953 for the canned fruits and vegetables hereinafter enumerated and had requested the Secretary of Labor to grant an exemption with respect to such contracts pursuant to the provisions of section 6 of the Act.

The notice also stated that a public hearing would be held concerning the request for exemption before the Administrator of the Public Contracts Division or his authorized representative on March 25, 1953 to afford interested parties an opportunity to appear and submit data, views, and arguments either in support of or in opposition to the proposal.

In accordance with said notice a public hearing was held at the designated time and place before William B. Grogan, authorized representative of the Administrator of the Public Contracts Division, at which all persons desiring to be heard were given an opportunity to present data, views, and arguments. The representative of the Secretary of the Army requested amendment of the Secretary's finding to include canned beets which had inadvertently been omitted. Following said public hearing a transcript of the record thereof was transmitted to me by Mr. Grogan.

On April 17, 1953 a similar finding and request was transmitted by the Administrator of Veterans Affairs, involving a substantially similar list of canned items.

After reviewing the entire record, I find that justice and the public interest will be served by granting until December 31, 1953 an exception from the operation of the contract stipulations and representations of section 1 of the Act for those weeks during which canning operations are performed under the exemptions provided by sections 7(b)(3) and 7(c) of the Fair Labor Standards Act. This exception will enable the Department of the Army and the Veterans Administration and the canning companies to overcome the procurement and production difficulties as established by the record.

Accordingly, pursuant to the authority vested in me by section 6 of the Act I do hereby grant an exception from the operation of all representations and stipulations of section 1 of the Act contained in any contract for the procurement of the following canned fruits and vegetables for the Armed Forces of the United States and the Veterans Administration awarded between the date hereof until and including December 31, 1953; provided that

(1) the exception from the contract stipulations and representations of section 1 of the Act shall not be available in weeks in which the canning of fruits and vegetables required under the contract is not exempt under sections 7(b)(3) or 7(c) of the Fair Labor Standards Act, as amended; and

(2) the exception from the child labor stipulations required by sections 1(d) and 2 of the Act shall not be available with respect to children under sixteen years of age knowingly employed in the performance of any such contract:

Apples, canned
Applesauce, canned
Apricots, canned
Asparagus, canned
Beans, lima, canned
Beans, string, canned
Beets, canned
Berries, canned
Carrots, canned
Catsup, tomato
Cherries, sour, canned
Cherries, sweet, canned
Corn, cream style, canned
Corn, whole grain, canned
Figs, canned
Fruit cocktail, canned
Grapefruit, canned

Juice, citrus
Juice, grape
Juice, pineapple
Peas, green, canned
Peaches, canned
Pears, canned
Pineapple, canned
Plums (prunes), canned
Potatoes, sweet, canned
Pumpkin, canned
Puree, tomato
Sauce, cranberry
Spinach, canned
Tomatoes, canned
Tomato juice, canned
Tomato paste, canned

Signed at Washington, D. C. this 26 day of May 1953.

MARTIN P. DURKIN
Secretary of Labor

ASSOCIATION ACTIVITIES: Meeting of N.C.A. Directors

Proceedings of the spring meeting of the N.C.A. Board of Directors would normally have been reported in this issue of the INFORMATION LETTER. This was made impossible because of a continuing strike of Washington, D. C., printing plant employees. The Board met Friday and Saturday, May 22 and 23, and carried out the program reported in the May 16 LETTER. Board actions and reproductions of various speeches and reports will be distributed to the membership in a Supplement at the earliest possible date.

CONGRESS: FDA Factory Inspection

Following the conclusion of public hearings last week, the House Committee on Interstate and Foreign Commerce has taken under executive consideration the Administration's request for a reinstatement of factory inspection authority under the Federal Food, Drug, and Cosmetic Act. It is expected that the Committee shortly will report to the House its recommendations for amendment of the food and drug law. The subject also is before the Senate Committee on Labor and Public Welfare but no action has been taken nor is any presently scheduled by the Senate Committee.

As reported in last week's issue of the INFORMATION LETTER, H. Thomas Austern represented the Association at the House Committee hearings. His testimony, the

formal statement filed with the Committee on behalf of the Association, and subsequent material supplied the Committee are reproduced as a Supplement to this issue of the INFORMATION LETTER.

CONGRESS: Defense Production Act

The Senate on May 19 passed and sent to the House a bill, S. 1081, authorizing various types of economic controls, active and standby, for two years ending June 30, 1955.

Cited as the "Defense Production and Temporary Controls Act of 1953," the bill would authorize the President, upon a declaration of war or adoption of a concurrent resolution by Congress, to declare an economic emergency and freeze prices, wages, and credit for a period of 90 days.

The base date for the freeze would be any "representative" day during the preceding 30-day period.

In the bill is a proviso intended to assure that farmers will receive parity prices if they are above the market level at the time of the freeze. The amendment, offered by Senator Young (N.D.) on behalf of himself and Senator Schoeppel (Kans.), prohibits a ceiling level for any agricultural commodity below the market price or parity, and specifies that "the ceiling level for any commodity processed or manufactured in whole or substantial part from any agricultural commodity shall be the higher of (i) the level specified in the foregoing provision, or (ii) such level as will reflect to producers of such agricultural commodity a price for such agricultural commodity equal to the ceiling level..."

The bill would extend authority of the government to allocate materials, but limits the allocation only to defense contractors.

CONGRESS: U. S. Trade Policy

The Senate on May 19 passed and sent to the House a bill, S. J. Res. 78, to provide for the creation of a bipartisan commission to study and make recommendations on U. S. foreign trade policy.

The bill would create an 11-man executive-legislative commission that would be authorized to conduct a broad investigation of foreign economic policy, including the reciprocal trade program, tariffs, and other issues.

The commission had been requested by President Eisenhower.

TAXES: Depreciation Adjustments

The Commissioner of Internal Revenue on May 11 established a new administrative policy with respect to depreciation adjustments for tax purposes in order to reduce controversies between taxpayers and the Bureau of Internal Revenue on this subject. The statement of policy is:

"The Internal Revenue laws allow as a deduction in computing net income a reasonable allowance for depreciation of property used in trade or business or of property held for the production of income. The purpose of the deduction is to permit taxpayers to recover through annual deductions the cost (or other basis permitted by law) of the property over the useful life of the property. The determination of the amount of the deduction is largely a matter about which there may be reasonable differences of informed judgment, but the impact on the revenues resulting from these differences may be negligible one way or the other over the years involved.

"Accordingly, effective May 12, 1953, and as respects all open years for which agreement as to the tax liability has not been reached at any level within the Internal Revenue Service as of that date, it shall be the policy of the Service generally not to disturb depreciation deductions, and revenue employees shall propose adjustments in the depreciation deduction only where there is a clear and convincing basis for a change. This policy shall be applied to give effect to its principal purpose of reducing controversies with respect to depreciation."

STATISTICS: Pimientos for Processing

The prospective 1953 planted acreage of pimientos for processing in Georgia is 22,000 acres, according to the Bureau of Agricultural Economics. This compares with 16,000 acres planted in the state in 1952 and an average of 15,450 acres for the preceding 10-year period.

In addition, Georgia processors are contracting with growers in Alabama, Florida, North Carolina, South Carolina, and Tennessee for a total of 6,750 acres. Last year it was estimated that 2,500 acres were planted by growers outside of the state, under contract to Georgia processors.

Planting was completed by May 15 except for a few isolated fields. Good stands are reported.

STATISTICS: Green Peas for Processing

The 1953 acreage of green peas, planted or to be planted for processing, is reported at 469,630 acres, according to the Bureau of Agricultural Economics. This exceeds the 1952 plantings of 443,330 acres by nearly 6 percent and the 1942-51 average planting of 465,880 acres by less than 1 percent.

Of the 1953 plantings, 122,800 acres are indicated for freezing and 346,830 acres for canning and other processing. The comparable figures for 1952 are 112,430 acres and 330,900 acres; for the 1942-51 average, 81,140 acres and 384,740 acres.

The 1953 acreage of sweet, wrinkled types totals 363,350 acres and smooth, round varieties 106,280 acres. In 1952 sweet, wrinkled varieties were planted on 346,520 acres and smooth, round green peas were planted on 96,810 acres.

In California, where harvested operations were well under way early in May, indications on May 15 pointed to a production of 13,950 tons. This compares with

a 1952 production of 14,640 tons and an average of 6,320 tons for the 1942-51 period.

Following is the acreage in prospect on May 15:

State	1952 Prelim- inary (acres)	1952 Planted (revised) (acres)	1953 Prelim- inary (acres)	Percent change from 1952
Maine	8,600	6,250	8,050	+ 29
New York	29,600	24,000	28,000	+ 17
Pennsylvania	12,900	14,000	15,400	+ 10
Ohio	2,500	2,500	2,000	- 20
Indiana	2,600	2,650	2,100	- 21
Illinois	29,100	29,000	30,400	+ 5
Michigan	5,700	6,100	6,600	+ 8
Wisconsin	139,000	133,000	137,000	+ 3
Minnesota	59,000	58,600	64,000	+ 9
Iowa	5,600	5,700	4,000	- 30
Delaware	2,700	3,200	3,700	+ 16
Maryland	8,000	7,800	8,100	+ 4
Virginia	2,100	2,000	2,400	+ 20
Idaho	10,000	8,900	8,600	- 3
Colorado	4,000	3,900	3,700	- 5
Utah	8,600	7,800	8,600	+ 10
Washington	61,200	61,200	65,500	+ 7
Oregon	59,800	49,000	51,500	+ 5
California	10,700	10,600	11,900	+ 12
Other states ^{1/}	7,410	7,130	8,080	+ 13
U. S. Total	469,110	443,330	469,630	+5.9
For freezing	123,950	112,430	122,800	+9.2
For canning and other processing	345,160	330,900	346,830	+4.8

^{1/} Ark., Ga., Kans., Mo., Mont., Nebr., N. J., Okla., Tenn., W. Va., and Wyo.

STATISTICS: Sweet Corn for Processing

According to the Bureau of Agricultural Economics, cool, wet weather during late April and first week of May delayed final work in eastern and midwestern states. Very little acreage has been planted to date. Planting was under way in all areas around May 15. In Idaho, Washington and Oregon, wet weather delayed early planting. Generally the crop is now being planted.

FOOD REGULATION: Coumarin Withdrawn from Sale for Use in Foods

The Food and Drug Administration announced May 22 that it has been informed by producers of coumarin that they are voluntarily withdrawing this flavoring agent from sale for all uses in foods.

Recent pharmacological research has raised a question of the safety of coumarin, particularly in view of the increasing use of this material, FDA stated.

Withholding coumarin is regarded by FDA as a precaution in the interest of public safety even though neither the industry nor the FDA knows of any case of human illness traceable to the flavoring agent. The FDA commended the members of the chemical industry for their action in the public interest.

FOREIGN TRADE: Venezuelan Food Regulations

Regulations requiring special labeling on foods imported into Venezuela have been suspended by the Venezuelan government, according to the Office of International Trade, U. S. Department of Commerce.

The special labeling requirements were scheduled to become effective May 31 (see INFORMATION LETTER of April 18, page 165).

The requirements that food imports be registered still will be enforced, according to OIT.

PUBLICITY: Article by President Ratzesberger

An article on the canned foods sales and merchandising situation by N.C.A. President Louis Ratzesberger, Jr., was the first feature of the Special Super Market Convention Section of the May 21 issue of the New York Journal of Commerce. Among points stressed by Mr. Ratzesberger are that per capita consumption of canned foods has increased and that they are good merchandise for retail outlets because of their "best buy" record, ease of handling, convenience, and time-saving factors of benefit both to storekeeper and consumer.

PERSONNEL: Green Giant Company Officers

Edward B. Cosgrove was made chairman of the board and William F. Dietrich president of the Green Giant Company at a meeting of the firm's Board of Directors in LeSueur, Minn., last weekend. The Director's meeting marked the 50th anniversary of the Green Giant firm.

PERSONNEL: F. A. Harding Retires

F. A. Harding, President of the N.C.A. in 1931, retired from active work with the Wm. Underwood Co. on May 20. Mr. Harding served the N.C.A. in a number of capacities, as a Director in 1924-25, a member of the Finance Committee from 1925 through 1945, as First Vice President in 1930, President in 1931, and on several Committees.

LABELING: 'Petit Pois' Peas

The N.C.A. Labeling Research Division reminds pea canners that regulations of the Food and Drug Administration restrict the use of the term "Petit Pois" on canned pea labels to the No. 1 sieve size.

Replies to a recent questionnaire sent to pea canners regarding their preference for labeling terms on size designations for canned peas show that some packers still wish to use this term on the No. 2 sieve size and on mixtures of No. 1 and No. 2 sieve sizes.

The Food and Drug Administration assures the N.C.A. that its viewpoint on this matter has remained the same for the past 30 years. As stated in TC-321, issued under date of September 5, 1940, it is:

"There has been no change in our position, announced in 1923, that the size designation 'Petit Pois' is inapplicable to peas larger than the No. 1 sieve size, that is to peas which in the raw condition will not pass a 9/32" mesh screen. As under the old Act, we are prepared to take action against this form of misbranding."

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